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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 6623 of 1997

with

CRIMINAL MISC. APPLICATION NO. 6624 OF 1997

with

CRIMINAL MISC. APPLICATION NO. 6625 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

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2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy  
of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

NANDULALJI RAMESHWARLAL

AGRAWAL

Versus

Appearance:

MR RAJESH M AGRAWAL for Petitioner  
MR K.J. SHETHNA, Sr. Counsel with Mr. VIPUL S MODI  
for Respondent No. 1  
MR. D.C. DAVE, ADDL. P. P. for Respondent No. 2

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CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 04/12/97

COMMON ORAL JUDGEMENT

These are 3 Miscellaneous Criminal Applications for cancellation of bail. They are being disposed of by a common order.

All the 3 applications have been filed by Nandulalji Agrawal, the father of the deceased Mamata. Criminal Misc. Application No. 6623 of 1997 has been filed for cancellation of bail of Devendrakumar Babulal Agrawal who has been enlarged on bail under Section 439 of the Code by the order of the Sessions Judge, Banaskantha dated 7.11.1997. Devendrakumar Babulal Agrawal is husband of the deceased Mamata.

Criminal Miscellaneous Application No. 6624 of 1997 has been filed for cancellation of bail granted under Section 438 of the Code of Criminal Procedure to Babulal Guljarilal Agrawal and Smt. Luniben Guljarilal Agrawal, father-in-law and mother-in-law respectively of the deceased Mamata.

Criminal Miscellaneous Application No. 6625 of 1997 has been filed for cancellation of bail granted to Smt. Vaijayantiben and Smt. Rajulben both sister-in-law of the deceased Mamata. They have been granted anticipatory bail by the same order.

On 3.10.1997, at about 2.00 a.m. when accused respondent Devendra reached house, he found his wife Mamata aged 22 years hanging beneath the fan. He immediately informed the parents. Police was also informed. The body was sent for post mortem. Doctor opined the cause of death as violent asphyxia. parents of the deceased also arrived in the morning. Police registered a accidental case. Brij Mohan, the brother of the deceased made a written complaint to District Superintendent Banaskantha at Palanpur on 7.10.1997, that

in spite of the fact that there is sufficient material, under the influence of the accused persons police is not registering a case of murder or at least abetting suicide. On the direction of the D.S.P., a C.R. case No. 1102 of 1997 for offence under Section 304-B, 306, 498-A and 114 of the I.P.C. has been registered at police station, Ambaji. Petitioner's daughter Mamata had married to the accused Devendrakumar Babulal Agrawal on 30.5.1996. Sufficient ornaments, household articles were given to the accused Devendrakumar Babulal Agrawal as dowry. Mamata gave birth to male child named Chirag six months prior to the date of incident. It is alleged that after marriage Mamata was reporting to her parents that she was being harassed and tortured and taunted by her husband, father-in-law, mother-in-law and sister-in-laws regarding insufficient and inferior quality of ornaments given to them. An assurance was given by the parents of Mamata that if the dowry is less, then they will be provided more and will see that she is not harassed. It is also stated that two days prior to the incident i.e. on 30.9.1997 Nandulal, father of Mamata, has gone to Ambaji. At that time Mamata told him that she was in great trouble as she was being tortured by her husband Devendrakumar Agrawal and in-laws. She also stated that now the torture has become unbearable. She also stated that her husband Devendrakumar Agrawal every day comes late at night in drunken condition and when she persuades him not to consume liquor then he beats her. On 3.10.1997 in early morning from Ambaji, Radheshyambhai Agrawal, Mahendrakumar Agrawal, Chandmalji Jain came to the house of the complainant and informed him that Mamata is in serious condition then he along with his wife rushed to Ambaji. There they found Mamata dead. This was a utter shock to them and they could not say anything. They suspected foul play in the death of Mamata. Police assured to them that they will investigate the case thoroughly and there is nothing to worry. While they were still waiting that their statements will be recorded, they came to know that police has recorded some statements on their own. Thus, they approached to P.I., Ambaji but he refused to record their statements and register the case. Thus, they had to submit written complaint to the D.S.P. on 9.10.1997.

I have read the English translation of the order of the learned judge. From the bed of deceased a "chit" written in her handwriting was recovered. Learned judge though it of decisive character. It is expressed that the "chit" does not give any indication to entertain doubt about the criminal complicity of the accused

persons. He found that doubt about the murder or dowry death has been raised at a belated stage, in spite of the fact that they were at cremation ground and they had opportunity to say so earlier. He also found that there is no ante mortem injury and hence it can be concluded that there is no case of offence under Section 302. With respect to offence under Section 304B and 306, learned Judge expressed that the question of dowry death is highly disputed question of fact, which cannot be gone into at this stage. The learned judge considered that the accused persons are reputed business persons and their property is situated within the jurisdiction of the court. In the last learned judge says that the attitude of the parents on unnatural death of their daughter implicating all the members of family should not be encouraged. Accused in such case deserves protection. Hence learned judge ordered granting bail to respondent husband and anticipatory bail to rest of the accused persons.

Mr. R.M. Agrawal, learned counsel appearing for the complainant-petitioner submits that the learned judge has failed to exercise the discretion properly in granting bail as well as anticipatory bail. He has referred to various decisions of this court and apex court and submitted that in a serious offence like dowry death the court should not grant anticipatory bail or regular bail. He has also referred to the decisions in CHANDULAL HARILAL LODHIYA VS. STATE OF GUJARAT reported in 1993(1) GLR 596, STATE OF MAHARASHTRA VS. BUDDHIKOTA SUBHA RAO reported in 1990 SCC (Cri.) 126), ARVINDKUMAR JASRAM GUPTA VS. STATE OF GUJARAT reported in 1990(2) G.L.H. 442, SHAHZAD HASAN KHAN VS. ISHTIAQ HASAN KHAN AND ANOTHER (1987) 2 SCC 684, KAMUBEN VS. PARMAR CHAMANBHAI N. reported in 1997(1) G.L.R. 449, STATE OF PUNJAB VS. IQBAL SINGH reported in AIR 1991 SC 1532, THAKORE LAXMANJI VS. STATE reported in 1993(1) G.L.R. 523, and STATE OF GUJARAT VS. MAHESH NAGARDAS THAKORE 1993(2) Crimes 405.

On the other hand Mr. K.J. Shethna, Sr. Advocate, has supported the order passed by the learned Sessions Judge. Relying on the decision of the apex court in the case of DOLATRAM AND ANOTHERS VS. STATE OF HARYANA reported in (1995) 1 SCC 349 it is submitted that rejection of bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. I have gone through the said decision. It is also held by the apex court that there should be very cogent and overwhelming circumstances for an order directing the cancellation of bail already granted.

I do not consider it necessary to deal with all the cases referred by the learned counsel for the petitioner. Suffice it to say that the consensus is that while considering the bail under Section 438 or 439 should also consider the circumstances in which the offence is committed. The court should bear in mind the resultant impact on the society on release of accused persons on bail. In case the discretion is not exercised judiciously, such an arbitrary order may call for order of cancellation of bail.

I have considered the rival contentions. I have read the chit. If the chit is actually in the handwriting of the deceased and it is written without any threat, which is still matter of investigation, says that she has no complaint to anybody. She is dying because she has become tired of her life. She has asked her husband to take care of his child. He should be admitted in hostel. Her ornaments of gold worth 65 tolas may be deposited in locker or money equivalent to its value be deposited in bank. The chit has many facets which can be examined at the stage of trial. At this stage if it does not implicate accused persons it also does not give clean chit to all the accused persons as the learned judge thought, by saying that it is of decisive character. So far as the delay is concerned, informant has stated that he expressed doubt in her death, but assurance was given by police that they will investigate the case thoroughly. It is their case that in spite of fact that they have not given any statement, some wrong statement has been written and case is sought to be disposed of as accidental case. There are allegations of malafides against the police at Ambaji of working under the influence of the accused persons. The case has been registered only after the direction is given by the D.S.P. Detailed examination of delay shall be done at the stage of trial, and not at the bail stage, particularly in a serious offence of dowry death. Learned judge completely lost sight of the existence of the provisions of Section 113-A and 113-B of the Evidence Act, Section 304-B and Section 498A of I.P.C. and the purpose of amendment in the statute. The reasoning of the learned judge firstly that the question of dowry death is a disputed question of fact and as such it cannot be gone into for rejection of bail and secondly the deprecation of the attitude of the parents in case of un-natural death of their daughter, can be safely be placed in the category of perverse approach.

Mamata died of unnatural death within 1 1/2 years of marriage. She was the youngest sister of 5 brothers.

Just three days prior to the incident i.e. 30.9.1997, when her father met her, she complained of unbearable torture. At least 5 witnesses have stated about the unlawful demand by the husband, father-in-law, mother-in-law and sister-in-laws. Still the learned judge in the realm of imagination says that she might have committed suicide, having become tired of the life, on account of the conduct of her parents. The reasoning is not only erroneous but also unfair to the bereaved parents of the deceased. The apex court in SAMUNDER SING VS. STATE OF RAJASTHAN reported in AIR 1987 SC 737 considering application for cancellation of bail in a case of dowry death observed that the court was under no compulsion to exercise its jurisdiction to grant anticipatory bail in such matters. The court observed thus:-

"It was neither prudent nor proper for the High Court to have granted anticipatory bail which order was very likely to occasion prejudice by its very nature and timing. We therefore consider it essential to sound a serious note of caution for future. The High Court is under no compulsion to exercise its jurisdiction to grant anticipatory bail in a matter of this nature."

On a careful consideration, in my view, the learned judge has failed to exercise the discretion judiciously in granting bail under Section 438 and Section 439 of the Code of Criminal Procedure to accused respondents. Accused Devendrakumar ought not to have been released at the stage of investigation, looking to the seriousness of the allegations. Such prompt orders, in a case like dowry death, bound to have adverse impact in the society.

In view of the aforesaid Criminal Miscellaneous Application No. 6623 of 1997 is allowed and the order of the learned Sessions Judge granting bail to Devendrakumar Agrawal is cancelled. Devendrakumar Agrawal shall be taken into custody forthwith.

So far as Criminal Misc. Application 6624 of 1997 granting anticipatory bail to Babulal Guljarilal Agrawal and Smt. Luniben Guljarilal Agrawal is concerned, the order granting anticipatory bail is also cancelled.

Dealing with the bail granted to Smt. Vaijayantiben and Smt. Rajulben, it appears that they are married and they are living separately and therefore I do not find any reason to cancel their bail. Accordingly,

Criminal Misc. Application No. 6625 of 1997 stands rejected.

A copy of this order be sent to Director General of Police. He must ensure fair investigation in the case. If necessary, he may entrust the investigation to any other police agency or issue appropriate direction to higher police authorities in the District.

Rule is made absolute in Criminal Misc. Application Nos. 6623 of 1997 and 6624 of 1997. Rule in Criminal Misc. Application No. 6625 of 1997 is discharged.

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